

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Hertzberg Analyst: Marion Mann DeJong Bill Number: AB 1392

Related Bills: See Legislative History Telephone: 845-6979 Amended Date: 08/19/1999

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Action To Determine Validity Of Amount Of Tax

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 26, 1999, STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY OF BILL

This bill would allow a taxpayer to bring an action, to determine whether an amount assessed by the Franchise Tax Board (FTB) is void, by posting a bond to guarantee payment of the amount due.

This bill also would add corresponding provisions that would apply to the Board of Equalization (BOE).

SUMMARY OF AMENDMENT

The August 16, 1999, amendments did the following:

- Modified the amount of the bond.
- Added a provision to allow the trial court to enforce the liability on the bond.

Corresponding changes were made to the provision administered by the BOE.

The August 19, 1999, amendment made a minor change to the provisions administered by the BOE.

The current law discussion of Specific Findings in the department's analysis of the bill as introduced February 26, 1999, still applies. A discussion of the bill as amended August 16, 1999, is provided below. The Legal Consideration, remaining Implementation Considerations, and the Board Position are reiterated below.

This analysis replaces the analyses of the bill as amended April 14, 1999, May 13, 1999, June 21, 1999, and June 30, 1999.

Board Position:

<input checked="" type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Legislative Director

Date

Geoff Way for J. Rosas 9/14/1999

EFFECTIVE DATE

This bill would become effective January 1, 2000.

SPECIFIC FINDINGS

This bill would allow a taxpayer, within one year after an assessment becomes final, to bring an action to determine whether that assessment is void in whole or in part. To bring an action without first paying the tax, the taxpayer must post a bond with FTB to guarantee payment of amounts reasonably expected to become due within the first year.

The bill would provide that the bond would not prevent the accrual of interest on the disputed amount. However, no penalty for late payment shall be assessed upon the disputed tax assessment with respect to which the bond is filed.

If during the time that the action is pending the trial court determines that the amount of the bond has become insufficient, the taxpayer must increase the amount of the bond to provide sufficient guarantee. In addition, FTB may annually require the plaintiff to increase the amount of the bond to guarantee additional interest accruing during the year. The FTB must make the request to increase the bond in writing. The plaintiff would have at least 60 days from the date of the notice to increase the amount of the bond or, as an alternative, to pay the additional interest accruing during the year.

This bill would require the amount and terms of the bond and the sureties on the bond to be approved by a judge of the trial court hearing the action. The court is to follow the rules, definitions and procedures set forth in specified sections of the Code of Civil Procedure. The bill provides that approval should not be unreasonably withheld. If the bond is approved, no collection action on the tax or other assessed amount that is subject to the action may be taken while the action is pending.

This bill would require the plaintiff (or the plaintiff's agent or attorney) to state under oath that a bond was approved and filed.

This bill would provide that liability on the bond may be enforced by the trial court if the assessment is determined to be valid and is not paid within 30 days after the judgment on the action becomes final.

This bill would apply to assessments made before, on or after the effective date of this bill, provided the tax period (statute of limitations for assessments) is still open. The bill would not authorize any action with respect to a claim where another provision or rule of law, including the doctrine of *res judicata*, bars an action on that claim. (The doctrine of *res judicata* has the effect of preventing a party to an action from re-litigating a case that has already been decided).

LEGAL CONSIDERATION

The provisions of this bill could be susceptible to constitutional challenge since the California Constitution (Article XIII, Section 32) specifically provides that no legal or equitable process shall issue in any proceeding in any court to prevent or enjoin the collection of any tax. If a taxpayer posts a bond, rather than paying all amounts due, and brings an action, this bill would prevent collection while that action is pending. However, Legislative Counsel has recently opined that this bill would not violate Article XIII, Section 32.

IMPLEMENTATION CONSIDERATIONS

This bill would raise the following implementation considerations:

- Since this bill would allow taxpayers to initiate a lawsuit by posting a bond rather than paying the full liability, more taxpayers may take their cases directly into court without adjudication before the BOE. This would result in increased litigation workloads.
- The bill specifies that the taxpayer must file a "bond to guarantee the payment of the amount of the assessment and any additional amount, including interest and penalties, that may reasonably be expected to become due during the first year." If taxpayers and the department dispute whether the bond is sufficient, increased litigation workloads could result.
- Since under current law the department does not assess late payment penalties on proposed deficiency assessments, the provision prohibiting the assessment of such penalties would have no impact to taxpayers or the department.

BOARD POSITION

Support.

At its July 6, 1999, meeting, the Franchise Tax Board voted 2-0 to support this bill as amended June 21, 1999.